



**OFFICE OF THE ATTORNEY GENERAL  
AND  
THE DEPARTMENT OF LAW**

**REPORT ON AUDIT  
FOR THE YEAR ENDED  
JUNE 30, 2013**

## **AUDIT SUMMARY**

Our audit of the Office of the Attorney General and the Department of Law and the Division of Debt Collection for the fiscal year ended June 30, 2013, found:

- proper recording and reporting of all transactions, in all material respects, in the Commonwealth Accounting and Reporting System;
- a matter involving internal control and its operation and noncompliance with applicable laws and regulations that is required to be reported; and
- the Office has completed corrective action with respect to the prior audit finding titled “Improve IT Risk Management and Contingency Plan Process.”

– TABLE OF CONTENTS –

	<u>Pages</u>
AUDIT SUMMARY	
AUDIT FINDING AND RECOMMENDATION	1
AGENCY HIGHLIGHTS	2
Attorney General's Office	3-4
Medicaid Fraud Control Unit	4-5
Division of Debt Collection	5-6
INDEPENDENT AUDITOR'S REPORT	7-8
AGENCY RESPONSE	9
AGENCY OFFICIALS	10

## AUDIT FINDING AND RECOMMENDATION

### **Improve File Transfer Security**

The Office of the Attorney General (Office) does not protect some of its sensitive data related to the Division of Debt Collection that it transfers over the internet with encryption. The Commonwealth's information security standard, SEC 501-07.1, Section AV-17-COV (2), requires agencies to "[p]rotect the security of remote file transfer of sensitive data to and from agency IT systems by means of approved encryption."

We have communicated the details of this issue to management in a separate document marked Freedom of Information Act Exempt under Section 2.2-3705.2 of the Code of Virginia, due to their sensitivity and description of security controls. Management has provided a corrective action plan to us under the same public disclosure exemption.

## AGENCY HIGHLIGHTS

The Attorney General is the chief executive officer of the Commonwealth of Virginia's Department of Law. The Attorney General and Department of Law, "Office of the Attorney General," acts as the Commonwealth's law firm. The Attorney General and his staff represent the Commonwealth's interests in all civil cases naming the Commonwealth, or any of its agencies or officials, as a party, and in criminal cases on appeal to the Court of Appeals of Virginia and the Supreme Court of Virginia. In cases involving federal law, the Attorney General represents the Commonwealth's interests in federal court. The Office also enforces consumer protection laws and investigates Medicaid fraud.

The Attorney General is also the legal advisor to the Governor and more than 200 state agencies, boards, commissions, and institutions. The Attorney General renders official opinions on the application of the law upon written request of the Governor, members of the General Assembly, members of the judiciary, state officials, or local constitutional officers. The Office handles criminal convictions on appeal and defends the state when prisoners sue concerning their incarceration. In addition, the Office defends legal challenges of the constitutionality of state laws and supervises the appointment and payment of private attorneys hired by other state agencies for various matters. The Office also administers grants to help reduce crimes involving gangs, drugs, and sex predators.

The Office's organizational structure is similar to a private law firm, with divisions devoted to legal specialties. The Office has five legal divisions with offices in Abingdon, Fairfax, Richmond, and Roanoke. A Deputy Attorney General heads each division and reports directly to the Chief Deputy Attorney General. The Administration Division provides finance, human resources, information systems, and operations support to the legal divisions. The following are the legal divisions.

- Civil Litigation Division (includes the Division of Debt Collection)
- Public Safety and Enforcement Division (includes the Medicaid Fraud Control and Tobacco Units)
- Health, Education, and Social Services Division
- Transportation, Real Estate, and Construction Division
- Commerce, Environment, and Technology Division

Beginning in fiscal year 2013, the Office of Attorney General includes activities of the Office of Consumer Affairs, Human Rights Council, and complaint-related responsibilities of the Board for Towing and Recovery Operators, which increased appropriations in the regulation of business practices program and resulted in the addition of the new program, Personnel Management.

The Division of Debt Collection is a separate agency within the Office. It provides legal services and advice related to the collection of funds owed to the Commonwealth. The following financial information presents separate information on the Office of the Attorney General and the Division of Debt Collection.

### Attorney General's Office

The Office receives approximately half of its funding from the General Fund with the remaining funding coming almost equally from special revenue and federal funds. The special revenue funds are primarily from fees charged to agencies and universities for legal services provided by the Office. State law permits the Attorney General to bill agencies for the legal services if the agency receives all or a part of its funding from non-general funds. The Office also receives federal grants supporting Medicaid fraud control activities.

The Office's activities are budgeted in four programs, the largest of which is the Legal Advice program. Attorneys in the Legal Advice program provide legal services to state agencies. The following schedule compares the Office's original and final budgets by program with actual expenses for fiscal year 2013.

#### **2013 Budgeted and Actual Expenses**

<u>Program</u>	<u>Original Budget</u>	<u>Final Budget</u>	<u>Expenses</u>
Legal advice	\$ 26,570,363	\$ 27,712,316	\$ 25,298,930
Medicaid program services	10,077,785	12,156,148	9,967,827
Regulation of business practices	2,904,410	3,575,614	2,512,399
Personnel management	-	422,508	264,580
Total	<u>\$ 39,552,558</u>	<u>\$ 43,866,586</u>	<u>\$ 38,043,736</u>

*Source: Commonwealth Accounting and Reporting System*

The following schedule includes detail relating to adjustments to appropriations during fiscal year 2013.

#### **Budget Analysis for Fiscal year 2013**

Original appropriations per Chapter 3	\$ 39,552,558
Subsequent legislative amendments per Chapter 806	2,078,363
Adjustments:	
Carry forward of prior year cash balances	255,697
Transfer of the Human Rights Council to the Office	422,508
Transfer of the Office of Consumer Affairs to the Office	650,400
Transfer from central appropriations for salary and benefit changes	772,270
Transfer from Department of Criminal Justice Services for Victim Witness Grants	<u>134,790</u>
Total adjusted appropriations	<u>\$ 43,866,586</u>

As previously, noted, State law permits the Office to bill agencies and universities for legal services if the agency receives all or a part of its funding from non-general funds. The Office

calculates an agency's legal service charges for a fiscal year using actual attorney hours worked during the previous fiscal year. At the start of a fiscal year, the Office notifies each agency of their expected charges for the year, and at the beginning of each quarter, the Office bills the agency for that quarter's portion. The following table provides detail of the Office's legal service revenues for fiscal years 2009 through 2013.

#### **Legal Service Revenues**

<u>Fiscal Year</u>	<u>Revenues</u>
2009	\$ 4,545,532
2010	5,393,597
2011	5,538,162
2012	6,690,691
2013	6,808,348

*Source: Commonwealth Accounting and Reporting System*

#### **Medicaid Fraud Control Unit**

The Virginia Medicaid Fraud Control Unit (MFCU) investigates and prosecutes health care provider insurance fraud against the state and federally funded Medicaid program. The MFCU is also required to investigate allegations of elder abuse and corporate neglect in nursing homes and health care facilities. Federal regulations require the Office establish the MFCU as a separate and distinct entity from the Department of Medical Assistance Services, the state agency that administers the Medicaid program. The U.S. Department of Health and Human Services has certified the MFCU, and it is one of 49 similar state units plus the District of Columbia in the United States. Federal law has expanded the scope of the MFCU to include any state and federal healthcare programs including Medicare, CHAMPUS, and others, in addition to Medicaid. MFCU has a criminal and a civil unit.

Federal grants fund the MFCU operations and require a 25 percent match of General Funds; however, in fiscal year 2008, the MFCU recovered \$39.8 million in the Purdue OxyContin criminal case and will use these funds indefinitely to provide the 25 percent Commonwealth share of the budget, as prescribed in the court order. The MFCU employs a professional staff of 96 criminal investigators, auditors, and several Assistant Attorneys General who are experienced in commercial and financial investigations.

The table below shows the total amount of MFCU recoveries over the last five years as ordered by the courts (fines, penalties, or restitutions). Because the Virginia Medicaid program is 50 percent federally funded and 50 percent state-funded, Virginia receives half of Medicaid recoveries. All recoveries go into the Virginia Health Care Fund established by the General Assembly in 2004 and must support health care services.

In fiscal year 2013, a \$1.5 billion settlement with Abbott Laboratories Inc. was approved. Because the MFCU was the lead investigator in this case, approximately \$1 billion of the settlement is included in the 2013 recoveries shown below. The remaining \$500 million is associated with the federal government and other states' share of the Medicaid program related recoveries.

The Commonwealth's portion of the settlement includes \$4.2 million for its share of the Medicaid program recoveries and \$1.5 million to cover MFCU investigative costs, both of which it has already received. In addition, as part of the settlement the Commonwealth will also receive \$115 million from criminal asset forfeiture penalties, which is required by federal regulations to be used for law enforcement purposes. The Commonwealth has received \$10.4 million of this amount and will receive the remaining portion over a multi-year period.

#### **MFCU Recoveries by Year**

<u>Fiscal Year</u>	<u>Total Recoveries</u>
2009	\$ 27,607,670
2010	25,390,467
2011	14,573,789
2012	47,212,652
2013	1,028,948,442

*Source: Medicaid Fraud Case Tracking System*

#### **Division of Debt Collection**

The Division of Debt Collection (Division) is a separate agency within the Office. It collects delinquent accounts for state agencies, state-supported institutions of higher education, and their hospitals. The Division receives delinquent accounts from state agencies and takes appropriate action, including litigation, to collect them.

The 2004 General Assembly passed legislation requiring agencies to forward past due accounts over \$3,000 and 60 days old to the Division. This 2004 legislation also mandated the allocation of collections among the creditor agency, the General Fund, and an amount to fund the Division's operations. The General Assembly removed the General Fund allocation in 2008, and the current allocation of collections is between the creditor agency and the Division.

#### **Division Operating Statistics for 2009-2013**

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Maximum employment level	24	24	24	24	24
Division budget	\$1,820,469	\$1,820,469	\$1,932,884	\$1,899,884	\$1,916,448
Number of accounts	11,286	12,403	14,818	16,386	18,608
Active accounts (\$ in millions)	\$157	\$166.5	\$193.5	\$215.6	\$256.4
Gross collections (\$ in millions)	\$11.8	\$10.4	\$9.3	\$10.5	\$11.3
General Fund allocation (\$ in millions)	\$ -	\$ -	\$ -	\$ -	\$ -

*Source: Commonwealth Accounting and Reporting System and the Division of Debt Collection*



The Division funds operations with a portion of fees retained from their collections. The Appropriation Act allows the Division to keep \$400,000 as operating capital and requires the transfer of any excess collections to the General Fund by September 1 of each year. The Division can request to keep more of the balance, but the Department of Planning and Budget must approve this request. At the end of fiscal year 2013, the Division had a cash balance of \$608,067. Subsequent to year-end, the Division obtained approval from the Department of Planning and Budget to keep an additional \$95,000 from the remaining cash balance to fund an anticipated increase in expenses in fiscal year 2014 for technology enhancements. The Division transferred the remaining cash balance of \$113,067 to the General Fund on August 30, 2013.

During the year, the Division performed a review of the rates it charges agencies for collection services. As a result of this review, the Division lowered its rates and processed revenue refunds of \$500,000 to the various agencies that utilized its collection services during the year. This is the second year that the Division has performed this rate review, which has resulted in lower year-end cash balances from previous years. The following table details the Division's operating revenues and expenses for the last five fiscal years.

**Revenues and Expenses – Fiscal Years 2009 – 2013**

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Beginning balance	\$ 1,849,860	\$ 1,024,919	\$ 887,987	\$ 761,709	\$ 403,366
Collection fee revenue	2,095,270	2,311,790	2,075,208	2,354,751	2,495,749
Expenses	(1,820,351)	(1,789,415)	(1,748,727)	(1,842,861)	(1,787,681)
Transfers	(1,099,860)	(659,307)	(452,758)	(375,233)	(3,366)
Revenue Refunds	<u>-</u>	<u>-</u>	<u>-</u>	<u>(495,000)</u>	<u>(500,000)</u>
Ending balance	<u>\$ 1,024,919</u>	<u>\$ 887,987</u>	<u>\$ 761,709</u>	<u>\$ 403,366</u>	<u>\$ 608,068</u>

*Source: Commonwealth Accounting and Reporting System*



Martha S. Mavredes, CPA  
Auditor of Public Accounts

# Commonwealth of Virginia

*Auditor of Public Accounts*

P.O. Box 1295  
Richmond, Virginia 23218

September 23, 2013

The Honorable Robert F. McDonnell  
Governor of Virginia

The Honorable John M. O'Bannon, III  
Chairman, Joint Legislative Audit  
and Review Commission

The Honorable Kenneth T. Cuccinelli, II  
Attorney General

We have audited the financial records and operations of the **Office of the Attorney General and Department of Law and Division of Debt Collection** for the year ended June 30, 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Audit Objectives

Our audit's primary objectives were to evaluate the accuracy of recorded financial transactions in the Commonwealth Accounting and Reporting System, review the adequacy of the Office's internal controls, test compliance with applicable laws and regulations, contracts, and grant agreements and review corrective actions of audit findings from prior year reports.

## Audit Scope and Methodology

The Office of the Attorney General and Department of Law and the Division of Debt Collection's management has responsibility for establishing and maintaining internal control and complying with applicable laws and regulations. Internal control is a process designed to provide reasonable, but not absolute, assurance regarding the reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations.

We gained an understanding of the overall internal controls, both automated and manual, sufficient to plan the audit. We considered significance and risk in determining the nature and extent of our audit procedures. Our review encompassed controls over the following significant cycles, classes of transactions, and account balances.

Expenses, including payroll  
Legal service revenue  
Division of Debt Collection

Medicaid Fraud Control Unit  
Information Systems Security

We performed audit tests to determine whether the Office of the Attorney General and Department of Law and the Division of Debt Collection's controls were adequate, had been placed in operation, and were being followed. Our audit also included tests of compliance with provisions of applicable laws and regulations, contracts, and grant agreements. Our audit procedures included inquiries of appropriate personnel; inspection of documents and records including vouchers, reconciliations, deposit certificates, billings, creditor agency collections and distributions, receipts from recoveries, and contracts; and observation of the Office of the Attorney General and Department of Law and the Division of Debt Collection's operations. We tested transactions and performed analytical procedures, including budgetary and trend analyses.

### Conclusions

We found that the Office of the Attorney General and Department of Law and the Division of Debt Collection properly stated, in all material respects, the amounts recorded and reported in the Commonwealth Accounting and Reporting System. The Office of the Attorney General and Department of Law and the Division of Debt Collection records its financial transactions on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The financial information presented in this report came directly from the Commonwealth Accounting and Reporting System.

We noted a matter involving internal control and its operation and compliance with applicable laws and regulations that requires management's attention and corrective action. This matter is described in the section entitled "Audit Finding and Recommendation."

The Office has taken adequate corrective action with respect to the audit finding reported in the prior year.

### Exit Conference and Report Distribution

We discussed this report with management on September 23, 2013. Management's response to the findings identified in our audit is included in the section titled "Agency Response." We did not audit management's response and, accordingly, we express no opinion on it.

This report is intended for the information and use of the Governor and General Assembly, management, and the citizens of the Commonwealth of Virginia and is a public record.

AUDITOR OF PUBLIC ACCOUNTS

SAH/alh



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

September 26, 2013

Ms. Martha Mavredes  
Auditor of Public Accounts  
101 N. 14<sup>th</sup> Street, 8<sup>th</sup> Floor  
Richmond, Virginia 23219

Dear Ms. Mavredes:

On behalf of the Attorney General and the Division of Debt Collection, I would like to thank you for providing us with an opportunity to comment on the findings and recommendations contained in the Fiscal Year 2013 audit of the Office of the Attorney General and Division of Debt Collection.

Management continues to recognize the need for compliance with the requirements of SEC 501-07.1, Section AV-17-COV (2). Over the past several weeks, we have actively worked to redress the concerns noted in the current audit report. As of September 23, 2013, these items have been corrected and are now in compliance with SEC 501-07.1, Section AV-17-COV (2) requirements.

Sincerely

A handwritten signature in blue ink that reads "Katelyn E. Melo".

Katelyn E. Melo  
Director of Administration

OFFICE OF THE ATTORNEY GENERAL

As of June 30, 2013

Kenneth T. Cuccinelli, II  
Attorney General

Patricia L. West  
Chief Deputy Attorney General

Norman Thomas  
Director of Administration

Christie Wells  
Director of Finance